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10 [Proposed] Attorney for Debtors and
11 Debtors in Possession

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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31 In re:
32 WORLD BOTANICAL GARDENS, INC.,
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35 Debtor.

CASE NO.: BK-N-13-50833-BTB
36 Chapter 11

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LEGAL MEMORANDUM2
I. Jurisdiction and Venue

3. 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C.
4. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
5. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

6
II. Relief Requested

7. 2. By this Application, the Debtor seeks to employ and retain the Darby Law
8. Practice as counsel in connection with the filing and prosecution of the above captioned Chapter
9. 11 case. Accordingly, the Debtor respectfully requests that the Court enter an order pursuant to
10. Bankruptcy Code Section 327(a), Bankruptcy Rules 2014(a), 2016(b), and 5002, and Local Rule
11. 2014 authorizing the Debtor to employ and retain Darby Law Practice under a general retainer as
12. their attorney to perform services pursuant to the fee agreement (the “Fee Agreement”), attached
13. as Exhibit 1 to the Declaration of Kevin A. Darby, Esq. filed in support of this Application (the
14. “Darby Declaration”).

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III. Background Facts

16. 3. On April 30, 2013, the Debtors filed a voluntary petition for relief under Chapter
17. 11 of the Bankruptcy Code (the “Petition Date”) thereby commencing this Chapter 11 Case.

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IV. Services to Be Provided

19. 4. Subject to further order of the Court and consistent with the Fee Agreement, the
20. Debtor requests the employment and retention of Darby Law Practice to render the following
21. professional services:

22. a. to advise the Debtor of its rights, powers and duties as Debtor and
23. Debtor in possession in the continued operation of business and management of properties;

24. b. to take all necessary action to protect and preserve the Debtor’s
25. estate, including the prosecution of actions on the Debtor’s behalf, the defense of any actions
26. commenced against the Debtor, the negotiation of disputes in which the Debtors is involved, and
27. the preparation of objections to claims filed against the Debtor’s estate;

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c. to prepare on behalf of the Debtor all necessary motions, applications, answers, orders, reports and papers in connection with the administration of the Debtor's estate;

d. to attend meetings and negotiations with representatives of creditors, equity holders or prospective investors or acquirers and other parties in interest;

e. to appear before the Court, any appellate courts and the Office of the United States Trustee to protect the interests of the Debtor;

f. to pursue approval of confirmation of a plan of reorganization and approval of the corresponding solicitation procedures and disclosure statement; and

g. to perform all other necessary legal services in connection with the Chapter 11 case. Darby Declaration, ¶ 2.

5. The Debtor submits that it is essential to employ Darby Law Practice as counsel to provide the above services. The services of Darby Law Practice are necessary to enable the Debtor to execute faithfully their duties as Debtor in possession.

V. Basis for Relief

6. Under Bankruptcy Code Section 327(a), the Debtor, “with the court’s approval, may employ one or more attorneys … that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee’s duties under this title.” 11 U.S.C. § 327(a). Further, the employment may be set “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a).

7. The Debtor desires to employ Darby Law Practice as their counsel in connection with the representation of the Debtor in the Chapter 11 case commenced in the District of Nevada.

8. Darby Law Practice is willing to render the necessary professional services as counsel to the Debtor. The Debtor respectfully submits that Darby Law Practice is well qualified to serve as counsel and assume the responsibilities required to render efficient representation to the Debtor in this Chapter 11 case.

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1 **VI. Darby Law Practice's Qualifications**

2 9. The Debtor has selected Darby Law Practice as counsel because of the firm's
 3 experience and knowledge in the field of Debtors' rights, business reorganizations and liquidations
 4 under chapter 11 of the Bankruptcy Code. Darby Law Practice has served as counsel to Debtors in
 5 several Chapter 7, 11 and 13 cases in the District of Nevada. Darby Declaration, ¶ 3.

6 **VII. Professional Compensation**

7 10. The Debtor submits that it is necessary to employ Darby Law Practice under a
 8 general retainer to render the foregoing professional services. Darby Law Practice intends to apply
 9 to the Court for allowance of compensation and reimbursement of expenses in accordance with
 10 applicable provisions of the Bankruptcy Code, the Local Rules and pursuant to any applicable
 11 procedures or orders established by the Court. Darby Declaration, ¶ 4. Darby Law Practice shall
 12 submit with their fee application detailed daily time entries for each individual providing services
 13 in one-tenth (.10) hour increments, explaining the services provided as well as a categorized
 14 summary of disbursements and expenses for which Darby Law Practice is seeking reimbursement.
 15 Id. The Debtors, subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules and the
 16 Local Rules, propose to pay Darby Law Practice its customary hourly rates in effect from time to
 17 time as set forth in the Darby Declaration. Id. at ¶ 5. The Debtors submit those rates are
 18 reasonable.

19 **VIII. Disinterestedness**

20 11. Darby Law Practice is a "disinterested person" within the meaning of Section
 21 101(14) of the Bankruptcy Code as required by Section 327(a) of the Bankruptcy Code and will
 22 not hold or represent an interest adverse to the Debtors' estate and has no connection to the
 23 Debtors, their creditors, related parties or the United States Trustee's Office or its employees. Id.,
 24 at ¶ 10.

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IX. Conclusion

WHEREFORE, the Debtors respectfully request entry of an order substantially in the form of Exhibit A attached hereto (i) granting the relief requested herein and (ii) such other and further relief as the Court may deem just and appropriate.

DATED this 17th day of June, 2013.

DARBY LAW PRACTICE, LTD.

By: /s/ Kevin A. Darby
KEVIN A. DARBY, ESQ.
[Proposed] Reorganization Counsel
for Debtors and Debtors in Possession

1 **Exhibit A**
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25 **EXHIBIT A**
PROPOSED ORDER
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8 KEVIN A. DARBY, NVSB# 7670
9 TRICIA M. DARBY, NVSB# 7956
10 DARBY LAW PRACTICE, LTD.
11 4777 Caughlin Parkway
12 Reno, Nevada 89519
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16 Reorganization Counsel
17 for Debtors and Debtors in Possession

18 **UNITED STATES BANKRUPTCY COURT**

19 **DISTRICT OF NEVADA**

20 In re:

21 WORLD BOTANICAL GARDENS, INC.,

22 Debtors.

23 CASE NO.: BK-N-13-50833-btb
24 Chapter 11

25 **ORDER GRANTING EX PARTE
26 APPLICATION OF DEBTORS PURSUANT
27 TO 11 U.S.C. § 327(a), FED. R. BANKR. P.
28 2014(a), 2016(b) AND 5002, AND LOCAL
RULE 2014, AUTHORIZING THE
RETENTION AND EMPLOYMENT OF
DARBY LAW PRACTICE, LTD.
AS COUNSEL TO THE DEBTOR**

29 EX PARTE
30 / No hearing required

31 Upon the application, dated June 17, 2013 (the “Application”), of Debtor and Debtor in
32 possession, WORLD BOTANICAL GARDENS, INC., for an order pursuant to Section 327(a) of
33 Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”),
34 Rules 2014(a), 2016(b) and 5002 of the Federal Rules of Bankruptcy Procedure (as amended, the

1 “Bankruptcy Rules”) and Rule 2014 of the Local Rules of Bankruptcy Procedure for the District of
2 Nevada (as amended, the “Local Rules”), authorizing the retention and employment of Kevin A.
3 Darby, Esq. of Darby Law Practice, Ltd. (“Darby Law Practice”) as counsel to the Debtors and this
4 Court having considered the Declaration of Kevin A. Darby in support of the Application (the
5 “Darby Declaration”); and the Court being satisfied, based on the representations made in the
6 Application and the Darby Declaration, that Darby Law Practice represents or holds no interest
7 adverse to the Debtors or the estate with respect to the matters upon which Darby Law Practice is
8 to be engaged and is a “disinterested person,” as such term is defined in Section 101(14) of the
9 Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy Code; and the Court having
10 jurisdiction to consider the Application and the relief requested therein in accordance with 28
11 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein
12 being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court
13 pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been
14 provided, and it appearing that no other or further notice need be provided; and the relief requested
15 in the Application being in the best interests of the Debtor and its estate and creditors; and the
16 Court having determined that the legal and factual bases set forth in the Application establish just
17 cause for the relief granted herein; it is hereby

18 **ORDERED** that the Application is granted in its entirety; and it is further

19 **ORDERED** that pursuant to Section 327(a) of the Bankruptcy Code and
20 Bankruptcy Rules 2014(a), 2016(b) and 5002, the Debtors’ employment and retention of Darby
21 Law Practice as counsel in accordance with Darby Law Practice’s normal hourly rates and
22 disbursement policies as set forth in the Darby Declaration, and pursuant to the Fee Agreement
23 effective as of the Petition Date, is approved; and it is further

24 **ORDERED** that Darby Law Practice shall apply for compensation and
25 reimbursement in accordance with the procedures set forth in Sections 330 and 331 of the
26 Bankruptcy Code, applicable Bankruptcy Rules, applicable Local Rules, guidelines established by
27 the Office of the United States Trustee for the District of Nevada, and such other procedures as
28 may be fixed by order of this Court; and it is further

1 **ORDERED** that the prepetition retainer monies paid to Darby Law Practice and not
2 expended for prepetition services and disbursements shall be held by Darby Law Practice as a
3 general retainer as security throughout the Debtors' bankruptcy case until Darby Law Practice's
4 fees and expenses are awarded and payable to Darby Law Practice on a final basis, and it is further

5 **ORDERED** that the terms and conditions of this order shall be immediately
6 effective and enforceable upon his entry; and it is further

7 **ORDERED** that notice of this Application as provided therein shall be deemed
8 good and sufficient notice of the Application.

9 **IT IS SO ORDERED.**

10 SUBMITTED BY:

11 By: /s/ Kevin A. Darby
12 KEVIN A. DARBY, ESQ. (NV SB #7670)
13 Darby Law Practice, Ltd.
14 4777 Caughlin Parkway
15 Reno, Nevada 89519
16 (775) 322-1237

17 APPROVED:

18 By: August B. Landis
19 Attorney for Acting United States Trustee
20 August B. Landis

21 # # #